IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

CONSOLIDATED MUTUAL OIL COMPANY, a corporation, and J. M. McLEOD,
Appellants,

vs.

THE UNITED STATES OF AMERICA,
Appellee.

No. 2787

CONSOLIDATED MUTUAL OIL COMPANY, a corporation, and J. M. McLEOD,
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NORTH AMERICAN OIL CONSOLIDATED, a corporation, et al.,
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SOME SUGGESTIONS ON THE OPINION IN UNITED STATES vs. STOCKTON MIDWAY OIL COMPANY DELIVERED BY HON. B. F. BLEDSOE.

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In the case of *United States* vs. *Stockton Midway Oil Company, et al.,* Judge Bledsoe has just held, on facts very similar to those involved in the instant case, that the group development doctrine cannot be applied

to the Pickett Act. This conclusion would seem to follow from the holding of the court that the Pickett Act requires the work to be done "Upon the precise land which might be subject to the withdrawal order."

With all due deference for the conclusions of the learned Judge who wrote the opinion, it becomes desirable, therefore, to test the correctness of this statement that the Pickett Act requires the work to be done "upon the precise land which might be the subject of the withdrawal order."

BOTH THE DEPARTMENT OF JUSTICE AND THE LAND DEPARTMENT DISAGREE WITH JUDGE BLEDSOE.

In the first place, the Department of Justice has almost invariably conceded that this interpretation of the Act was not correct. In the hearing before the Senate Committee on Public Lands, H. R., 406, page 348, the Attorney General himself said:

> "I have never held that the work counted by the Pickett Act is necessarily confined to work done within the boundaries of the tract claimed."

And so far as we can recall, the various learned Assistants to the Attorney General who have actually conducted the trial of the cases in California and Wyoming have taken the same position as their chief.

Furthermore, the Land Department is in accord with the Department of Justice on this point, and the Honorable Commissioner (Tallman) said in the Honolulu Oil Company case:

"Furthermore, I am unable to see any good and sufficient reason why such work and improvements not within the boundaries of a particular claim may not in proper cases and within certain limitations be equally considered as work leading to discovery, where such work and improvements are designed and adapted for a unit of development of several claims under a common connected system."

PHRASEOLOGY OF PICKETT ACT SHOWS INTENT OF CONGRESS TO RECOGNIZE WORK OFF OF THE CLAIM AS SUFFICIENT.

Admittedly, as stated by the learned Judge, there is no express language in the Pickett Act, requiring the work to be done upon the precise land, but we are not content to rest with this. Not only is there no such language in the Act, but the circumstances under which the Act was passed show such words were omitted *ex industria.*

If it be true that *Miller* vs. *Chrisman,* 160 Cal., 440, furnished the language of the Pickett Act, is it not of the greatest significance that the requirement that the claimant must "remain in possession," which is emphasized in that decision, was omitted from the Act? With the language of the decision before Congress at the time of the framing of the bill, is it not more reasonable to assume that the omission was deliberate rather than inadvertent, especially in view of the further language of the Act which protects both *occupants* and *claimants?* Had Congress intended that all work required should be

done upon the precise land, as the learned Judge states, the word "occupant" would have included every possible claimant under the protection of the Act, and the addition of the word "claimant" would have been a mere pleonasm.

The construction placed upon the Pickett Act by the Court in the Stockton Midway Oil Company case necessarily assumes that Congress did not notice the words "remains in possession" in *Miller* vs. *Chrisman,* and used the meaningless word "claimant" with no purpose in view.

JUDGE BLEDSOE MISCONCEIVED MEANING OF "WORK LEADING TO DISCOVERY."

In the Stockton Midway case Judge Bledsoe says:

> "Confessedly, at the date of the Executive withdrawal order in 1909, no work of any kind, diligent or otherwise, leading to a discovery of oil on the Southeast Quarter of Section 14 was in progress."

If it is intended by this to intimate that the defendants conceded that no such work was in progress leading to the discovery of oil on the Southeast Quarter of Section 14, then counsel for the defendants in the Stockton Midway Oil Company case either expressed themselves most obscurely, or they have made a concession which the facts involved do not warrant.

It appeared without controversy that a well was being drilled within a few feet of the common corner

of the four quarters of Section 14 on the date of the withdrawal. The well itself was just within the boundary lines of the Southwest Quarter, and discovery therein proved the existence of oil on each of the adjoining claims, at least, where the derrick stood.

Can this Court conceive of any one link in the chain leading to discovery of greater importance than that which discloses to the searcher that the oil will be found at an indicated place? This well would show within a few feet at what depth oil would be struck on the adjoining land. It expedited the work and decreased the cost. The defendants, therefore, urge with all possible earnestness that the drilling of the well on the Southwest Quarter was work leading to the discovery of oil just across the line on the Southeast Quarter.

ERRONEOUS MEANING GIVEN TO THE WORD "LEADING" BY JUDGE BLEDSOE.

The conclusion of the learned Judge is, perhaps, attributable to his rather unusual definition of the words "leading to discovery." He defines them as meaning "To bring about discovery." We have made a careful search, and find no authority for this definition.

According to Webster and the Standard dictionary, "lead" means "to guide," "to show the way." To define these words as meaning "to bring about dis-

covery" would make the sufficiency of the work done by the operator depend on the result. The only work sufficient would be the actual drilling of a well to a discovery. The building of a camp to be used as the base of operations does not "bring about" a discovery, although the Circuit Court of Appeals of the Eighth Circuit, in the Grass Creek Oil case, held that the building of such a camp is sufficient to constitute work *leading to discovery*. A water line or a road cannot bring about discovery, although the Land Office, in the Honolulu Oil Company case, has held that it is sufficient to constitute work leading to discovery. More than this, if an operator were actually drilling a well on the withdrawal date, and afterwards were compelled to abandon it by reason of mechanical difficulties, and immediately started another well, then, under this definition, the operator was not diligently at work at the date of the withdrawal, because the first well, which never reached the oil, could certainly not be said to bring about a discovery.

In using the words "leading to discovery" in their literal significance as defined by Webster and the Standard, there is absolutely nothing that could be done outside of the drilling of the well itself which would more clearly guide or show the way to the oil than another well just across the line from the property in question.

The decision, furthermore, may be attributed to the view taken by the learned Judge that the Pickett Act

is to be construed with strictness in favor of the Government. The Pickett Act is a remedial statute, so intended, and under the general laws, all remedial statutes are to be liberally construed.

Beley vs. *Napthaly,* 169 U. S., 359,

construing a statute to protect equitable rights against the Government.

JUDGE BLEDSOE'S DECISION CONFLICTS WITH ESTABLISHED PRINCIPLE.

The opinion is confessedly in conflict with the whole line of mining cases, ending with *Copper Glance Lode,* 29 Land Decisions, 542, in which it has been held, without a dissenting voice, that work for the development of a mining claim may be done on one of a group of claims. In the Copper Glance Lode case, the Secretary of the Interior applied this ruling to an application for patent against the Government, so that the situation is precisely analogous to the case at bar. The learned Judge is of the opinion that the Department might have been too liberal in its construction of Section 2325 of the Revised Statutes in this decision. In so doing, however, the Department was following an unbroken line of authorities, and, so far as we know, the principles therein laid down have never been departed from. But whether the decision was correct or not, it has stood for over sixteen years. It affects the title to mining claims worth fabulous sums.

It has become a rule of property, and we respectfully submit, in view of well recognized rules, that the decision should not be questioned at this late date, unless it is so palpably erroneous that no other conclusion is possible.

Pennoyer vs. *McConnaughy,* 140 U. S., 1.

JUDGE BLEDSOE'S VIEWS CONFLICT WITH JUDGE RINER'S.

The decision in the Stockton Midway case is also in conflict with the opinion of Judge Riner in the case of *United States* vs. *Grass Creek Oil Company,* and with the opinion of the Circuit Court of Appeals (236 Fed., 483) affirming Judge Riner's decision. With great deference to the views of the learned Judge, we submit that his statement that Judge Riner arrived at a contrary conclusion "without giving consideration to the precise point involved herein" is without foundation. Judge Riner sustained the position of the defendants on the group development theory as a totally separate and distinct reason from the contention that they made a discovery. Judge Riner upheld defendants on two grounds, first, that they made a discovery long before the withdrawal, and, secondly, that they were diligently at work at the time of the withdrawal, assuming that they had not made a discovery. Judge Riner's holdings on group development cannot be explained on the theory that a discovery had

been made, because if discovery had been made, no work at all was necessary, and the group development theory was not applicable.

It is also sought to distinguish Judge Riner's decision on the ground that in that case it is stated that the parties entered into an agreement to drill a well on each parcel of land, whereas, in the instant case, they bound themselves to drill a well on each parcel only in the event that oil was discovered.

To hold that an operator is not diligently at work because he has a mental reservation to discontinue it when he has once satisfied himself that there is no possibility of discovering oil simply means that there is no such thing as diligent work. All these operators are after the oil in the land, and if there is no oil, they do not want the land. Under the distinction pointed out, the defendants would be protected only if they absolutely bound themselves to drill three more wells on the other three quarters, even though the land should be proved valueless for oil by the drilling of the first well. Assuming these wells would cost from twenty to forty thousand dollars apiece, is it conceivable that Congress intended that in order to comply with the provisions of diligent operation, it was necessary for a man to bind himself by so unbusinesslike an arrangement as to actually waste from sixty to one hundred thousand dollars after ascertaining that his expenditures would be wholly futile?

IN CONCLUSION.

The conclusion to which we are forced, after a very earnest consideration of the expression that the Pickett Act requires all work to be done *on* the precise land which is the subject of withdrawal is that it is contrary to (a) the position of the Attorney General, (b) the rulings of the United States Land Office, (c) the only court decisions which have considered the subject.

Respectfully submitted.

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